THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

WRIT PETITION No.8984 of 2003

Date: 30.10.2007

Between:

K.Krishna Murthy

……PETITIONER(S)

A N D

1. The Joint Collector, Anantapur and others

……RESPONDENT(S)

THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

WRIT PETITION No.8984 of 2003

ORDER:

Petitioner is an authorized fair price shop dealer at Balijepalle village of N.P.kunta Mandal of Anantapur District. Second respondent, (Revenue Divisional Officer, Penukonda, Anantapur District), basing on the allegations made against the petitioner, suspended his authorization and after making an enquiry had cancelled his authorization through the order dated 27.01.2003. Questioning the said order, petitioner preferred an appeal to the first respondent (Joint Collector, Anantapur) who allowed the appeal through the order dated 31.03.2003 and passed orders to release stock to the petitioner. Thereafter stock was released to the petitioner. Thereafter on a communication received from the second respondent, first respondent, by the order impugned in this petition, in exercise of his *suo motu* power of review, kept the order dated 31.03.2003 passed by him under suspension. Hence, this petition.

2. The contention of the learned counsel for petitioner is that inasmuch as the A.P. State Public Distribution System Control Order, 2001 (for short – 'the 2001 Order') does not confer power of review of the order passed by him on the first respondent, first respondent has no power to keep the final order passed by him under suspension and so the order impugned is unsustainable. The contention of the learned Government Pleader is that since Clause 5-A of the 2001 Order vests in the first respondent the power of *suo motu* review, he, in exercise of that power, kept the

final order passed by him earlier under suspension, and in any event since the period of authorization of the petitioner had already expired and his authorization is not renewed for further period, this petition became infructuous.

3. Clause 5-A of the Order reads-

> "**5-A. Suo Motu Review**:- The Chief Rationing Officer in respect of Hyderabad City or the District Collector/Joint Collector elsewhere may either *suo motu* or an application may call for examine the records under clause (5) of this order relating to any order passed under sub-clause (2) or (4) for the purpose of satisfying himself as to the legality or propriety or adequacy of the punishment imposed and for reasons to be recorded in writing, add to amend revise or annul the orders passed by the appointing authority. Before passing final orders under this clause, the Chief Rationing Officer, in respect of the twin cities of Hyderabad and Secunderabad District Collector/Joint Collector elsewhere shall give the fair price shop dealer concerned an opportunity of making his representation and pass such order thereon as it may deem fit."

So, it is clear that the power that is conferred on the first respondent by the 2001 Order is to test the validity of the order under sub-Clauses (2) & (4) of Clause 5, passed by his subordinate officers. In exercise of that power only first respondent entertained the appeal preferred by the petitioner against the order passed by the second respondent and set aside the said order of the second respondent. After disposal of that appeal, first respondent who became a functus officio, has no right either to review the said order passed by him, nor has the power to keep the said final order passed by him in an appeal preferred by the petitioner in abeyance, because no provision in the 2001 Order is brought to my notice which empowers the first respondent to review his own final order, and as it is well known that the power of review is not an inherent power and should be specifically conferred on the quasi judicial authority by the statute or the Order under which the said authority is appointed. Since

the first respondent became functus officio after allowing the appeal preferred by the petitioner and is not vested with the power to review his own final order, he has no power or authority to keep the final order passed by him under suspension. So, the order impugned is liable to be and hence is set aside.

4. What are the consequences of the respondents not renewing the authorization of the petitioner is alien to this petition, because the point for consideration in this petition is whether the first respondent has the power or authority to suspend his own final order. Therefore, I am unable to agree with the contention of the learned Government Pleader that this petition became infructuous due to the non-renewal or extension of the authorization of the petitioner.

5. Therefore, the writ petition is allowed and the order impugned is set aside. Parties are directed to bear their own costs in this petition.

30.10.2007

Cvrk